

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

Hearing Dates:

September 19 and 21, 2001

Subject Matter of Proposed Regulations:

Automatic Transmissions

Section Affected:

§ 3361.1, Title 16, Division 33,
Chapter 1, Article 5.5, California
Code of Regulations

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

Today's automotive technology has begun to outpace some of the regulations promulgated by the Department of Consumer Affairs/Bureau of Automotive Repair (Bureau); in particular, Section 3361.1. Automatic transmissions have become more sophisticated with the introduction of front wheel drive (transaxles) and advanced computer and electronic controls. Several of the provisions in Section 3361.1 need to be clarified and brought up to date with current technologies.

Section 3361.1 sets standards for the repair/replacement of automatic transmissions. The current regulation requires automatic transmission repair facilities to disclose the cost of a rebuilt exchange transmission, excluding hard parts, as provided in subsection (d)(2). Section 3361.1(d)(6), the "Important Notice," was originally designed as a protection for consumers to enable them to weigh the costs of having their transmission repaired against having it replaced. Although the "Important Notice" was supposed to be used as a consumer protection device, it has not proven itself to be as effective as Section 3353. Instead, it has created a way for unscrupulous transmission repair facilities to charge for additional hard parts when transmissions are exchanged; parts that the customer may not actually receive.

Furthermore, the additional estimate and disclosure requirements in Section 3361.1(d) are unnecessary and burdensome and, for the most part, duplicative of the requirements of Section 3353. When Section 3361.1 was first adopted, there was a need to address the estimate and disclosure requirements. Over time, Section 3353 has been amended and clarified and now addresses the concerns that subsection (d) was originally intended to address.

The proposed action will specifically do the following:

- **Amend the opening paragraph.**

The opening paragraph of Section 3361.1 is amended to include a sentence that specifies that the automatic transmission portion of a transaxle is to be considered as an "automatic

transmission” for the purposes of this section. This sentence further provides that the term “automatic transmission” includes the differential portion of a transaxle if it shares a common oil supply with the transmission portion. This change is necessary in order to recognize current technology and to avoid any confusion regarding this section’s applicability to front wheel drive transaxles.

The closing sentence of this paragraph is also amended to clarify who is subject to the specified minimum requirements of this section. The amendment makes it clear that these requirements are applicable to any automotive repair dealer that either repairs, sells **or** installs automatic transmissions. This change is consistent with the current interpretation and application of this provision.

- **Amend subsection (a).**

Subsection (a) is amended to specifically require a diagnostic check of the electronic control module and associated components of electronically controlled automatic transmissions. Again, this amendment is necessary in order to recognize current technology. The amendments further require compliance with Sections 3353, 3375, 3376 and 3377 under specified conditions. This amendment will specifically apply the consumer protections of those sections to automatic transmission repair transactions, will eliminate unnecessary duplication of disclosure and notice requirements and will reduce paperwork for automotive repair dealers that engage in automatic transmission repair.

- **Amend subsection (b).**

Subsection (b) is amended by clarifying the term “exchanged” when used to describe an automatic transmission. The reference to the use of the descriptive terms “rebuilt,” “remanufactured,” “reconditioned,” or “overhauled” is changed to require their use, as well as the use of the terms “new” or “used,” when the term “exchanged” is used. This change clarifies and reinforces the application of Business and Professions Code section 9889.8. These are nonsubstantive, editorial and grammatical changes that do not affect the meaning or application of this regulation and are consistent with its current application.

- **Add a new subsection (c).**

The provisions relating to the use of the terms “rebuilt,” “remanufactured,” “reconditioned,” and “overhauled” (formerly found in subsection (b)) are renumbered as subsection (c) with amendments that clarify when the provisions of this subsection are applicable to the use of the foregoing terms. Paragraphs (1) – (5) undergo only minor, nonsubstantive, technical, editorial and grammatical changes that do not affect the meaning or application of this regulation.

In addition, paragraph (6) is added regarding computer and electronic transmission controls and paragraph (7) is added regarding torque converters. This change is necessary in order to recognize current technology in electronic and computer controlled automatic transmissions.

- **Amend and renumber subsection (c).**

Subsection (c) is renumbered as subsection (d) and is amended with only minor, nonsubstantive, grammatical and editorial changes that do not affect the meaning or application of this regulation.

- **Delete subsections (d) and (e).**

Subsections (d) and (e) of the current regulation are deleted in their entirety. These provisions are unnecessary, burdensome and duplicative. The application of section 3353 to automatic transmission repair transactions (see amendments to subsection (a) above) ensures consumer protection and prevents automatic transmission repair facilities from fraudulently charging for hard parts. Automatic transmission repair facilities will be required to disclose the total cost for repair of the customer's transmission, including hard parts. This will allow the customer the opportunity to weigh the costs and make informed decisions. Further, automatic transmission repair facilities will be required to obtain authorization from the customer before proceeding with additional repairs and costs not part of the original estimate.

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Business Impact:

This action will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment:

The proposed action does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Objections or Recommendations/Responses:

The following comments/objections/recommendations were made, either in writing or orally at the public hearings, regarding the proposed action:

1. **Mike Latham, Service Manager, Maita Ford-Mercury, Auburn, CA, in an email message sent and received August 8, 2001, offered the following comments:**

- a. I wish to express my heartfelt thanks for the proposed regulation changes. Any “little bit” to reduce my overhead and paperwork is greatly appreciated. I concur with the changes and heartily approve their passage.

This expression of support was accepted and was considered in the adoption of the proposed action.

2. Manny Tumasian, Automatic Transmission Instructor, College of Alameda Auto Program, Alameda, CA, in oral testimony at the June 20, 2001 hearing, and in an email message sent and received August 29, 2001, offered the following comments:

- a. Suggest replacing paragraph (3) of subsection (c) with the following:

“(3) All bands which apply and release during D3 or D4 operation have been replaced with new or relined bands.”

The old language made sense for practically all 3-speed automatics where a front or intermediate band (with exceptions) would apply in Drive second gear to stop a rotating member. However, in dealing with automatic transaxles that simple statement doesn’t always apply. For example, in a General Motors 4T60, the 1-2 band is in the back of the case and it is applied in first and second gears while in Drive. When the transaxle shifts into third gear, the 1-2 band releases. Also, what might be called the front band is actually a reverse band. It applies only in reverse while the vehicle is standing still. There is not a rotating drum to stop so, therefore, no wear on that band. If someone were to use the old language, that would be a front band and would have to be replaced.

The suggested new language should apply to all automatic transmissions, even ones that haven’t been released yet. You take any automatic transmission and look at the clutch and band application. Then you figure which bands are working bands during shifting in both D3 and D4 ranges. Those are the bands that wear and must be replaced since they either stop a rotating member by applying or allow a member to rotate by releasing. In either case, wear occurs, although much more wear would take place on an applying band.

This comment/recommendation was accepted and the proposed action was modified as follows to accommodate it:

The text of the proposed action was modified to include all bands that are either applied or released during the forward drive range shifting operations of the transmission. The following change was proposed:

“3361.1(c)(3) All ~~front and intermediate~~ bands have been replaced with new or relined bands.”

The bureau recognizes that the degree of wear on various bands is dictated by their

operation. The recommendation to refer to specific bands by name or designation was considered in the development of the modified text. However, to cover each and every specific application for each and every band and transmission combination would be impossible. Since all bands wear to some degree, and since they are one of the major components in a transmission that do wear, it is in the consumer's best interest to simply require the replacement of all bands.

- b. Suggest replacing subsection (d) with the following:

“(d) Since all modern torque converters have clutches, the torque converter must be replaced during an ‘overhaul’ much in the same manner as all lined clutches are replaced. With the customer’s authorization, the torque converter shall be replaced with a new, rebuilt, remanufactured, reconditioned, or overhauled torque converter. A torque converter shall not be represented as rebuilt, remanufactured, reconditioned, or overhauled unless the torque converter shell has been opened, all components of the overrunning clutch assembly have been inspected and replaced as required, all friction materials have been replaced as required, all rotating parts have been examined and replaced as required, the shell has been resealed, and the unit has been pressure tested.”

The old language, in part, says that the torque converter shall be examined, cleaned, and made serviceable. There is nothing to service on a torque converter. It is a sealed unit and all that can be done is to examine the exterior. If the hub is slightly scored, one might be able to crocus cloth or 600 wet sand the hub to return it to service. The problem is that we are required to replace the frictions in the transmission/transaxle, but the friction (clutch) is ignored in the torque converter. There is no practical way to check the condition of the lining inside the torque converter; therefore, the torque converter must be replaced just like the frictions inside the transmission/transaxle.

This comment/recommendation was rejected because:

The only change made to this subsection was to strike the caption, “Inspection of Torque Converter,” to renumber the subsection, and to conform and clarify the reference to a rebuilt transmission as including “remanufactured” or “overhauled.” The latter change conforms the reference to the provisions of the proposed new subsection (c) - previously included in subsection (b).

Additionally the bureau views the required replacement of all converters with rebuilt, remanufactured, or overhauled converters, as unnecessarily adding cost to the consumer. If the repair facility inspects the unit, which by definition is part of the transmission (§ 3361.1(d) - formerly (c)), and finds that it is serviceable, the guarantee extended for the transmission covers the converter and the consumer can be assured of its operational worthiness. If replaced, the converter must be identified as new, used, rebuilt or reconditioned. Whether it is replaced or inspected and reused, the same guarantee would apply; either way, the consumer is adequately protected.

- c. Suggest replacing subparagraph (C) of paragraph (4) of subsection (c) with the following:

“(C) All sealing rings, regardless of their composition, are to be replaced.”

Back in the “good old days” all sealing rings were metal. But, in today’s transmissions/transaxles, the sealing rings could be steel, vamac, pollyacrylic, teflon, vespel, etc. So, it makes sense not to mention metal. Simply stating “all sealing rings” ought to be clear. We are not concerned with what they are made of. It’s simply irrelevant.

This comment/recommendation was accepted and the proposed action was modified as follows to accommodate it:

The BAR agrees with this statement and recommendation. The text of the proposed action was modified to eliminate any reference to the composition of sealing rings, thereby requiring that all sealing rings be replaced, without limitation. The following change was proposed:

“3361.1(c)(4)(C) All ~~metal~~ sealing rings ~~that are used in rotating applications~~”

3. Jack T. Molodanof, the California AAMCO Dealers Association, Sacramento, CA, and Michael J. Pekula, Director of Consumer Affairs, AAMCO Transmissions, Inc, Bala Cynwyd, PA, in written comments dated September 17, 2001, offered the following comments:

- a. Overall, we support the proposed regulation change. We concur with BAR’s finding that today’s automotive technology has begun to outpace regulations promulgated nearly twenty years ago. Clarification of the standards established for the diagnosis and repair of automatic transmissions is welcomed.

This expression of support was accepted and was considered in the adoption of the proposed action.

- b. We understand the position of the BAR that current disclosure regulations (§ 3361.1(d)), sometimes referred to as the “Important Notice,” are duplicative of other, existing disclosure requirements found in § 3353. Twenty years ago, § 3361.1(d) was properly conceived, but has resulted in sometimes imprecise and potentially confusing disclosure. At times, service facilities, which attempted to comply with the requirements of subsection (d), may have been faced with inconsistent enforcement interpretations. AAMCO appreciates BAR’s interest in eliminating regulations that could be subject to inconsistent interpretation.

This expression of support was accepted and was considered in the adoption of the proposed action.

- c. The operation of many automatic transmissions may now be affected by electronic components external to the transmission itself that include solenoids, sensors, switches

and computer control modules. These require scanning to verify the source of any possible malfunction. The proposed regulations require a general diagnostic check of the transmission's electronic control module, which may or may not require scanning. We believe that the language should be amended to specifically include checking of the actual trouble codes of the transmission's electronic control module. We suggest the following amendment:

"3361.1(a) ... In the case of an electronically controlled automatic transmission, this inspection shall include a *check of the diagnostic check trouble codes* of the transmission's electronic control module ~~and its associated components~~. ..."

We believe the above language adds precision and clarity of what this requirement will exactly entail.

This comment/recommendation was accepted and the proposed action was modified as follows to accommodate it:

The text of the proposed action was modified to specifically include the scanning of diagnostic trouble codes as part of the diagnostic check of a transmission's electronic control module (ECM). The phrase "and associated components" was deleted, as it is not necessary. The scanning of trouble codes for the ECM will determine which, if any, "associated components" need to be evaluated. The following change was proposed:

"3361.1(a) ... In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check, including the retrieval of any diagnostic trouble codes, of the transmission's electronic control module that controls the operation of the transmission and its associated components. ..."

- d. AAMCO respectfully disagrees with BAR's comment that the creation and implementation of the "Important Notice" established a further opportunity for fraudulent repair facilities to charge for unnecessary parts. The "Important Notice" was a well-intentioned attempt to ensure consumer protection by requiring necessary price disclosures.

This comment/recommendation was rejected because:

The "Important Notice" was, indeed, well intentioned. The enactment of this requirement did not, in and of itself, create fraud. However, BAR is aware of countless instances of unscrupulous repair dealers manipulating and using loopholes in the "Important Notice" to the detriment of consumers. It is the exclusion of hard parts from the disclosure requirements that is of the greatest concern. By eliminating subsection (d), this exclusion is eliminated as well. By applying the requirements of Section 3353 to Automatic transmission repair/replacement transactions, the "Important Notice" requirement is rendered superfluous and unnecessary.

Furthermore, by eliminating the "Important Notice" requirement, dealers will be relieved

of the burden of completing duplicative disclosure statements, and of printing additional disclosures. If the “Important Notice” were to be modified or revised, dealers would not be able to use their current supplies of pre-printed forms. New forms would have to be printed and the old forms discarded. This appears to be an unnecessary expense and burden. By simply eliminating the “Important Notice” requirement, existing supplies of forms may be used up and new forms could then be printed without the “Important Notice,” perhaps at a savings to station owners.

- e. Consumers have two distinct service options when faced with a major transmission malfunction. That is, either the replacement of the defective transmission with a complete, exchanged, reconditioned transmission, or the repair of the defective transmission that may entail a reconditioning service. The automatic transmission regulations established reasonable requirements in performing either an exchange or reconditioning service. These regulations mandate the replacement of specific components in order to characterize a service as “reconditioning” and further mandate the examination of many internal transmission components which can only be performed by removing and dismantling the transmission in a manner commonly referred to as a “teardown.” As a result, the offer of performing a transmission reconditioning service entails some knowledge of certain known costs to complete the service, along with uncertainty as to other costs associated with the replacement of internal components. In the case of an offer to provide an exchange of the entire transmission, no uncertainty exists. Those facilities, which offer to provide a transmission reconditioning service, are required to first perform a teardown at an agreed cost. Facilities that offer to exchange the entire transmission at an agreed cost need not perform a teardown. The “Important Notice” requirement recognized these distinct service options and seemed to have been designed to provide affirmative disclosures depending on the service option offered by the facility. Section 3353 affords some consumer protection by requiring that a written, estimated price for teardown service be prepared before that service can be performed. Consumers need to be advised in advance, however, that the written teardown estimate is not a complete estimate of all charges to perform a reconditioning service.

This comment/recommendation was rejected because:

The Bureau, after considering this statement, finds that Section 3353 affords the consumer ample notice regarding the teardown, applicable time frames and the cost to reassemble. There is no mention in section 3353 of a “reconditioning service.” The current language of section 3353(b) makes it clear that a component may still require repair, even if it is reassembled as part of the teardown estimate.

The “Important Notice” requires that an automotive repair dealer give the customer two comparative prices for a rebuilt automatic transmission: one for an exchange unit, and one for rebuilding the transmission in the customer’s vehicle. The bureau has received complaints from dealers because they may not offer one or the other of the two options. Many dealers choose to only offer exchange units, while others choose to rebuild the customer’s transmission in their own shop. Either way, these repair dealers are at a loss to provide a price for something they don’t offer.

- f. Under Section 3353, consumers are only responsible for the parts and services authorized. After teardown, consumers are not responsible for any additional costs without their knowledge and consent. The elimination of Section 3361.1(d) means that certain printed disclosures will no longer be required. Repair facilities will continue to provide additional pricing information to consumers to place them in a position to make an informed decision thereby ensuring consumer protection. AAMCO welcomes the opportunity to continue to comply with Section 3353 and to provide California consumers with such information as AAMCO centers have done for two decades.

This comment/recommendation was, in part, rejected because:

The comment that AAMCO intends to “provide California consumers with such information as AAMCO centers have done for two decades” was rejected because BAR cannot give a blanket endorsement of AAMCO’s policies or actions without first confirming that AAMCO’s actual transactions with consumers comply with sections 3353, 3361.1 and 3373.

The general expression of support and of AAMCO’s intent to comply with section 3353, was accepted and considered in the adoption of the proposed action.

4. Tom Fortune, President, Automatic Transmission Rebuilders Association, Canyon Country, CA, in oral testimony at the September 19, 2001 hearing, offered the following comments:

- a. I’m not sure if I support this regulation change because I’m not sure why the change is being made. I think that the “Important Notice” concept is a good idea, but I think that the wording of it is outdated, specifically where it says, “Frequently, hard parts do not need to be replaced.” Frequently, hard parts DO need to be replaced and I think the “Important Notice” would work well if it were changed to reflect that.

I’d just like to get a better understanding of why the “Important Notice” is being removed. The fear of some in the industry is that with it gone altogether that it might be subject to interpretation and that we’ll have varying interpretations up and down the state.

This comment/recommendation was rejected because:

The “hard parts” statement is not the only subject of the “Important Notice” that is outdated. The “Important Notice” requires that an automotive repair dealer give the customer two comparative prices for a rebuilt automatic transmission: one for an exchange unit, and one for rebuilding the transmission in the customer’s vehicle. The bureau has received complaints from dealers because they may not offer one or the other of the two options. Many dealers choose to only offer exchange units, while others choose to rebuild the customer’s transmission in their own shop. Either way, these repair dealers are at a loss to provide a price for something they don’t offer.

- b. Specifically, with torque converters, it says that all friction materials have been replaced as required. Does that mean that used friction materials in torque converters are okay as long as they are good?

This comment/recommendation was rejected because:

This issue is covered by current regulation, and is not affected by the proposed action. However, to answer the question, yes, when a transmission is called rebuilt, remanufactured, reconditioned or overhauled, the torque converter must have been inspected, cleaned and made serviceable to manufacturer's specifications. If the torque converter is not within manufacturer's serviceable specifications, it must then be replaced with a new, rebuilt, remanufactured, reconditioned, overhauled or unimpaired used torque converter. In either case, used torque converter friction material is permissible as long as the torque converter and its internal parts (including friction material) are within manufacturer's serviceable specifications.

- c. I own a transmission shop. I rebuild customers' transmissions in house to the specifications of this regulation. I use all new friction materials inside. I have information that a lot of the remanufactured transmissions, in fact, do not have new friction materials inside them. That creates an unfair disadvantage if we have to build a transmission according to this regulation when these "new remans" that are being sold everywhere are not only not built in this state but don't meet the requirements of this regulation.

This comment/recommendation was rejected because:

This comment is not germane to the proposed action. This comment pertains to an enforcement issue that relates to this regulation in general, but not to the proposed action in particular.

It should also be mentioned, however, that if this statement about transmission re-manufacturers is correct, their transmissions would not meet the current requirements of Section 3361.1 and could not be sold in California as "rebuilt," "remanufactured," "reconditioned" or "overhauled" transmissions. Furthermore, automotive repair dealers in California could be held responsible pursuant to Business and Professions Code section 9884.9 and California Code of Regulations section 3359, for selling such a transmission and holding it out as being "rebuilt," "remanufactured," "reconditioned" or "overhauled."

If there is, in fact, evidence of unfair competition, adversely affected parties have recourse in the courts. Business and professions Code section 17200, et seq., provides individuals and businesses the ability to pursue civil actions against those engaged in acts of unfair competition.

5. Dennis Madden, International Division, Automatic Transmission Rebuilders Association, Oxnard, CA, in oral testimony at the September 19, 2001 hearing, offered the following comments:

- a. In subsection (a) of section 3361.1, it indicates that a diagnostic check of the transmission's electronic control module and its associated components is required. It is unclear what associated components this refers to. There are a lot of components that don't have anything to do with the transmission, but are involved with the single control module that controls everything.

This comment/recommendation was accepted and the proposed action was modified as follows to accommodate it:

The text of the proposed action was modified to specifically include the scanning of diagnostic trouble codes as part of the diagnostic check of a transmission's electronic control module (ECM). The phrase "and associated components" was deleted, as it is not necessary. The scanning of trouble codes for the ECM will determine which, if any, "associated components" need to be evaluated. The following change was proposed:

"3361.1(a) ... In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check, including the retrieval of any diagnostic trouble codes, of the transmission's electronic control module that controls the operation of the transmission and its associated components. ..."

- b. There are also some cases where other modules that are involved, like a body control module, can cause transmission problems. That's not addressed here either, so it's a little unclear.

This comment/recommendation was accepted and the proposed action was modified as follows to accommodate it:

Please refer to comment 5-a.

- c. Something that would work here and would be pretty effective would be to include a diagnostic check of the control module's trouble codes. In other words, make the control module do its own diagnosis, which it's capable of doing.

This comment/recommendation was accepted and the proposed action was modified as follows to accommodate it:

Please refer to comment 5-a.

- d. Subsection (c) of section 3361.1 says that an automotive repair dealer that performs automatic transmission work through a sublet contractor must comply with the specified requirements that follow. How would a shop know that the sublet contractor met those requirements? It would be impossible for them to know.

This comment/recommendation was rejected because:

Automotive repair dealers are held responsible for their subcontractors, employees and agents pursuant to Business and Professions Code section 9884.9. The proposed action merely emphasizes, and reminds dealers of this responsibility as it specifically relates to the exchange and/or rebuilding of automatic transmissions. It is the dealer's responsibility to ensure that the subcontractors/suppliers they deal with provide a product that complies with the requirements of this regulation. How they accomplish this is up to them, but some effort should be made if there is any question about compliance. This may be an area where the trade associations (i.e., ATRA) could play a valuable role.

- e. ZF, which is the manufacturer of almost all the OEM transmissions for BMW's, actually has a chart on the wall in their factory that shows about five or six different clutch plates. Each one shows a varying degree of wear and darkness from heat. There are two, for example, that can't be re-used and three or four that can be. The person rebuilding the unit looks at the clutches that came out of it and compares them to the chart on the wall and either replaces them with new or re-uses them. So that's a known industry practice of an OE manufacturer. If you were to get a transmission for your BMW from the BMW dealer, it would most certainly have used frictions in it. So, in 3361.1(c)(4)(A), you might want to add the qualifying phrase, "as required," as is used in the torque converter provision. (See § 3361.1(d))

This comment/recommendation was rejected because:

This comment is not totally germane to the proposed action. This comment, for the most part, pertains to an enforcement issue that relates to this regulation in general, but not to the proposed action in particular.

It should also be mentioned, however, that if this statement about transmission re-manufacturers is correct, their transmissions would not meet the current requirements of Section 3361.1 and could not be sold in California as "rebuilt," "remanufactured," "reconditioned" or "overhauled" transmissions. Furthermore, automotive repair dealers in California could be held responsible pursuant to Business and Professions Code section 9884.9 and California Code of Regulations section 3359, for selling such a transmission and holding it out as being "rebuilt," "remanufactured," "reconditioned" or "overhauled."

Adding the phrase, "as required," is unacceptable, as it would open the door for the use of used parts that could seriously decrease the reliability and serviceability of the rebuilt transmission. Rather than allowing technicians to determine whether a critical part is re-useable or not, it is better to simply require that it be replaced. Different technicians will have differing opinions about what conditions would require replacement of a part if the phrase, "as required," was added; it is simply too subjective in this instance.

If the dealer is unable to meet the rebuilding standards he may wish to only repair the specific failure and bill the repair accordingly. This language or limitation would not

apply to a repair.

The need to specify that the friction material must be replaced is driven by its failure rates and the rates of abuse by the industry in this area that have been observed by BAR. Unlike the torque converter, which the industry for the most part replaces when a transmission is rebuilt, the friction material in the transmission receives much more wear and is far more critical to the operation of the unit. Furthermore, the Bureau does not receive a large number of complaints regarding torque converter failure after rebuilding.

After further consideration of this comment and comment 5-d, the creation of a possible loophole was noticed. It appeared that the originally proposed amendment of the current subsection (b) might permit manufacturers and dealers to refer to replacement transmissions as “exchanged” in order to avoid the requirements of the proposed new subsection (c). This was clearly not the intent of the proposed action, as the current provisions of Section 3361.1 do not allow this and Business and Professions Code section 9884.8 requires that any parts supplied be described as either “new,” “used,” “rebuilt” or “reconditioned,” as the case may be. Consequently, BAR has proposed the following modified language for subsection (b) to correct this oversight:

~~“(b) Use of Words.—When the word “exchanged” is used with any of the following expressions, to describe an automatic transmission, it shall mean that the automatic transmission is not the customer’s unit that was removed from the customer’s vehicle. An automatic transmission shall be—~~
Whenever the word “exchanged” is used to describe an automatic transmission, it shall be accompanied by ~~described by a word or descriptive term~~ such as “new,” “used,” “rebuilt,” “remanufactured,” “reconditioned,” or “overhauled,” or by any an expression of like meaning; ~~only if the following work has been done since the transmission was last used:”~~

Please refer to comment 4-c also.

- f. Another example is the '84 GM 440-T4 transmission. For several years after it was introduced, they did not make available the steel friction plates for the second clutch. When people had to replace those plates with aftermarket plates it would set up a chatter. The problem was simply that the OEM parts were not available. Consequently, they ended up re-using the original plates, which would be contrary to this regulation. But, the fact is, those old original plates that were in decent condition were far better than anything that was available aftermarket. You can find examples like this in Toyota and several other imports where OEM parts are not available and the after market replacement parts are inferior by comparison to even the old part that came out of the transmission. Again, in 3361.1(c)(4)(A), you might want to add the qualifying phrase, “as required,” as is used in the torque converter provision. (See § 3361.1(d))

This comment/recommendation was rejected because:

This comment cites rare, outdated and isolated incidents and tends to overstate their significance. Neither the proposed action nor the current regulation requires the use of

OEM replacement parts. To describe parts as being in “decent condition” is vague and ambiguous and would make the provision unenforceable and subject to varying individual interpretations. The need to replace friction materials in the transmission differs from the need to replace similar materials in the torque converter.

- g. Subsection (c)(6) refers to the transmission’s electronic components, but it doesn’t specify whether those are internal or external. There are components that are attached to the transmission with brackets, but don’t serve any purpose as far as its function. Then there are other components that are far removed from the transmission that would be part of the inspection mentioned earlier (computer control module). It would be better here to refer to internal electronic components and let the external components fall under the diagnostic trouble code check.

This comment/recommendation was accepted and the proposed action was modified as follows to accommodate it:

In some instances, customers specifically ask dealers to simply rebuild their transmissions. The dealer is not asked to do a teardown or to inspect the transmission and diagnose any problems. There is no inspection and no diagnostic trouble code check required in such a situation. Subsection (c)(6) ensures that all external components are checked as part of the rebuilding process, so that the customer will receive a transmission that is fully functional. It would not be appropriate to limit the application of subsection (c)(6) to internal electronic components.

Please refer to comments 3-c and 5-a also.

- g. There are a couple of units these days, for example the 42LE and the LHS used in the Intrepid and the Concord, which have a differential built inside the transmission/transaxle housing. There is no mention of any checks of these differentials and that should probably be included as well.

This comment/recommendation was accepted and the proposed action was modified as follows to accommodate it:

The bureau agrees with this comment and recommendation. The text of the proposed action was modified to include the differential portion of a transaxle in the definition of and “automatic transmission” if it shares a common oil supply with the transmission portion of the transaxle. The following change was proposed:

“3361.1 ... The term ‘automatic transmission’ shall also apply to the automatic transmission portion of transaxles for the purposes of this regulation, unless both the automatic transmission portion and the differential portion of the transaxle share a common oil supply, in which case the term ‘automatic transmission’ shall apply to both portions of the transaxle. ...”

To enable the consumer to make an informed choice, the differential must be considered

part of the transmission in the case of a transaxle where both share a common oil supply. The failure of either portion could cause a failure of the other. To not include these components would not do justice to the consumer if a transmission failed and also had a differential failure. The consumer should be advised of both. The dealer should not be allowed to rebuild only the transmission portion and later inform the consumer that the differential portion has also failed and additional repairs are needed.

There were no comments/objections/recommendations made or received regarding the **modified** proposed action during the 15-day public comment periods.